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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI`I

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ILIO'ULAOKALANI COALITION,	)	
a Hawaii, nonprofit corporation;	)	
NA'IMI PONO, a Hawaii	)	CIVIL NO.04-00502 DAE BMK
unincorporated association; and	)	
KIPUKA, a Hawaii unincorporated	)	
association,	)	DEFENDANTS' RESPONSE TO THE
	)	COURT'S ORDER TO SHOW CAUSE;
Plaintiffs,	)	and CERTIFICATE OF SERVICE
	)	
v.	)	
	)	
ROBERT M. GATES, Secretary of	)	
United States Department of	)	
Defense; and JOHN McHUGH, <sup>1</sup>	)	
Secretary of the United States	)	
Department of the Army,	)	
	)	
Defendants.	)	

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<sup>1</sup>Pete Geren, former Secretary of the United States Department of the Army, has been replaced by John McHugh as Secretary. Mr. McHugh is, therefore, automatically substituted for Mr. Geren pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

On September 23, 2009, the Court issued an Order to Show Cause (Doc. #256) requesting simultaneous briefing from the parties as to why judgement should not be entered at this time. Defendants, Robert M. Gates, in his official capacity as Secretary of the United States Department of Defense, and John McHugh, in his official capacity as Secretary of the United States Department of the Army, hereby respond to the Court's Order.

As explained in its Order, on December 29, 2006, this Court issued an Order Setting Interim Injunction, enjoining the Defendants from implementing, executing, or proceeding with various activities, including grading, grubbing, other ground disturbance, construction, land acquisition, geotechnical testing, unexploded ordinance clearance, and Stryker Brigade Combat Team-specific training, except for specified, limited actions that may proceed during the term of the interim injunction. See Doc. #168 at 57. As provided in the Order, the interim injunction "will remain in place until either Defendants have complied with the National Environmental Policy Act, or the parties return to this Court with changed circumstances, whichever occurs sooner." Id. at 2.

On April 15, 2008, Defendants filed a Notice of Record of Decision, notifying the Court and Plaintiffs that the Army had complied with the National Environmental Policy Act (NEPA) by preparing a supplemental environmental impact statement and

issuing a Record of Decision selecting Hawai'i as the location to permanently station the 2<sup>nd</sup> Brigade, 25<sup>th</sup> Infantry Stryker Brigade Combat Team ("2/25th SBCT"). See Doc. #255 at 1-3 and 255-2 (March 2008 Record of Decision). Defendants' Notice further explained that this decision will be formally announced through publication of a Notice of Availability in the Federal Register on or about April 18, 2008 and, consistent with 32 C.F.R. 651.14(b)(3)(viii), no actions in furtherance of this decision will occur prior to publication of the Notice in the Federal Register. Id. at 3. As represented, on April 18, 2008, the Notice of Availability of the Record of Decision selecting Hawai'i as the permanent location for the 2/25th SBCT was published in the Federal Register. See 73 Fed. Reg. 21121-01 (April 18, 2008).

In its September 23, 2009 Order to Show Cause, the Court noted that "[i]t appears the requirements of this Court's Order and the Ninth Circuit's remand have been met." See Doc. #256 at 2. Defendants respectfully agree with the Court's observation. The Defendants' completion of the supplemental NEPA analysis satisfied one of the conditions set by the Court for the expiration of the interim injunction. See Order (Doc. #168) at 2. Therefore, Defendants respectfully submit that the terms of the interim injunction have been satisfied and the Court should enter judgment dismissing this action in its entirety.

Respectfully submitted this 7<sup>th</sup> day of October 2009.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the **DEFENDANTS' RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE** was filed electronically through the Court's electronic case filing (ECF) system. Notice of this filing will be sent to the following counsel of record by operation of the Court's ECF system.

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/s/ Barry A. Weiner  
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